128.
13.4.2023
S.D.

W.P.A. 26774 of 2022

Dipak Kumar Halder
Vs.
The State of West Bengal & Ors.

Ms. Susmita Dey (Basu)
… For the Petitioner
Ms. Sonal Sinha
….For the W.B.S.M.I.C.L.

Mr. Syed Nasirul Hosain
…For the Respondent Nos. 1 & 2

The petitioner challenges an impugned order dated June 25, 2019 whereby the benefits of Modified Career Advancement Scheme (MCAS) was sought to be withdrawn. Admittedly, a sum of Rs.3,21,348/- was deducted from the monthly payments of salary of the petitioner from November 2019 to October 2020. The petitioner worked as Typist, Grade-I, a Group (C) employee. The petitioner was superannuated from service on October 31, 2020. The impugned order was passed on June 25, 2019, a few months prior to the retirement of the petitioner.

Ms. Dey (Basu), learned counsel appearing on behalf of the petitioner argues that such a deduction was arbitrary and illegal. She submits that she is squarely covered by the decision reported in **(2015) 4 SCC 344 (The State of Punjab and Ors. vs. Rafiq Masih (White Washer))**. She relies on the conditions laid down in sub-paragraph nos. (i) to (v) of paragraph no. 18 of the said judgment wherein the recovery by the employers was held to be impermissible in law in the following circumstances.

> "(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
> (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
> (iv) Recovery in case where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

She further submits, that not only the petitioner is a Group – 'C' employee but also the recovery of the excess amount has been made from an employee who was to retire within one year.

She further prays for interest on delayed payment of provident fund dues and gratuity amount to the petitioner, causing extreme hardship to the petitioner/retired employee.

A sum of Rs.15,28,096/- as provident fund dues was paid to the petitioner on January 4, 2021. First instalment of gratuity to the tune of Rs.15,11,280/- was released to the petitioner on March 19, 2021. A sum of Rs.2,81,720/- being second instalment of gratuity was released to the petitioner on August 23, 2022.

Ms. Sinha, learned counsel appearing on behalf of the employer/WBSMICL submits that the petitioner's case is different from that of **Rafiq Masih** (supra). She relies on the Office Memo dated July 14, 2010 issued by the Managing Director, WBSMICL in support of her contentions that pay fixation/enhancement of the pay was '*provisional*' and '*overdrawal*', if any, was recoverable forthwith. She submits that since it has been made unequivocally clear by the Memo dated July 14, 2010 that the benefits are provisional and recovery could be made, the petitioner cannot maintain a case against recovery of an overdrawn amount that was wrongly granted to him.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds;

(a) the petitioner is squarely covered by the ratio in the case of **Rafiq Masih** (supra).

(b) The petitioner is not only a Group – 'C ' employee but was also an employee from whom a few months before his retirement the amount of Rs.3,21,348/- was sought to be recovered on account of it being overpaid.

(c) Reliance is placed by this Court on the Division Bench Judgment in the case of **West Bengal State Minor Irrigation Corporation Ltd. & Ors. Vs. Pradosh Kumar Kundu**) in **M.A.T. No. 750 of 2022**.

(d) It is also not lost upon this Court that the overpayment/overdrawal made to/by the petitioner was not on account of any misrepresentation by the petitioner and therefore should not be recovered relying on **Sahib Ram vs. State of Haryana and Ors.** reported in **1995 Supp (1) SCC 18**.

In the light of the discussions above, this Court finds that the petitioner who has superannuated from service on October 31, 2020 will suffer extreme hardship in the event the said amount of Rs.3,21,348/- is not repaid to him. The deduction of the amount for being overdrawn has already caused hardship to the petitioner.

In the circumstances, the impugned order dated June 25, 2019 is quashed and/or set aside.

The respondent authorities are directed to pay the said overdrawn amount of Rs.3,21,348/- to be refunded along with interest @ 6% p.a. within three months from date. The petitioner will be entitled to interest @ 6% p.a. on the provident fund amount of Rs.15,28,096/- payable from November 1, 2020 (the date subsequent to the date of retirement) till January 4, 2021 (the date on which it has been actually paid). The petitioner is also entitled to interest @ 6% p.a. on a sum of Rs.15,11,280/- (first instalment of gratuity) with effect from November 1, 2020 till the actual date of payment on March 19, 2021 and the interest on the sum of Rs.2,81,720/- (second instalment of gratuity) @ 6% p.a. from November 1, 2020 till August 23, 2022 (being the date on which it was actually released).

The said interest will be paid within 3 months from the date of order. In the event of default, the rate of interest will stand increased to 8% p.a.

With the directions aforesaid, **W.P.A. 26774 of 2022** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(**Lapita Banerji, J.**)